UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

PETER ALBERS,

Plaintiff,

v.

YARBROUGH WORLD SOLUTIONS, LLC, et al.,

Defendants.

Case No. 5:19-cv-05896-EJD

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

Re: Dkt. No. 12

Plaintiff Peter Albers brings suit against Defendants Yarbrough World Solutions, LLC ("YWS") and Dally E. Yarbrough alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and of California labor laws. Defendants contend that this Court must dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted. Having considered the Parties' papers, the Court **GRANTS in part and DENIES in part** Defendants' motion to dismiss.[1]

I. BACKGROUND

A. Factual Background

Plaintiff is a construction worker in California—he is not personally licensed by the California Contractors State License Board to perform construction services in the state of California. Complaint ¶ 21 ("Compl."), Dkt. 1. Defendants operate a "staffing solutions"

[1] Pursuant to N.D. Cal. Civ. L.R. 7-1(b), this Court found this motion suitable for consideration without oral argument. *See* Dkt. 23.

company, which helps contractors find construction workers for large-scale commercial and government projects in California and across the United States. *Id.* ¶¶ 13, 14. Defendants provide contractors with a site representative and handle the compensation, benefits, and taxes for the construction workers "without the [contractor] having the additional overhead." *Id.* ¶ 14; *see also id.* ¶ 15. Plaintiff worked for Defendants from approximately 2006 until August 6, 2019. *Id.* ¶ 21.

Plaintiff alleges that Defendant YWS controlled and directed his construction work. *Id.* ¶ 16. Defendant YWS "negotiates all compensation" with its contractor clients on behalf of its construction workers. *Id.* Defendant YWS requires construction workers to report their hours to YWS through YWS's contractor clients, and Defendant YWS maintains the right to terminate its construction workers if a contractor client determines that a construction worker has failed to perform as promised. *Id.* Defendant YWS makes profit by retaining a portion of the compensation generated by construction workers. *Id.* ¶ 17. The construction workers are not customarily engaged in an independently established trade, occupation, or business and are not required to have any professional licenses or specified experience in the construction industry. *Id.* ¶ 18. Defendant YWS represented to its contractor-clients that construction workers are YWS employees whose tax withholding and conferment of benefits are handled by YWS. *Id.* ¶ 19.

In fact, Defendant YWS allegedly forced its construction workers to sign "independent contractor/exclusion" waivers for the right to benefits, workers compensation, and employee status. *Id.* ¶ 19. Moreover, Defendant YWS did not provide its employees with any benefits or insurance, did not pay YWS's employer's share of state or federal taxes, and did not withhold any state or federal taxes from YWS employees. *Id.* ¶ 20. Defendants withheld these facts from their contractor clients. *Id.*

As a condition of his employment, Defendants required Plaintiff to sign an "Independent Contractor/Exclusion Letter" ("Exclusion Letter") prepared by YWS. *Id.* ¶ 22. This letter stated: (1) Plaintiff "operates as an independent contractor/consultant;" (2) Plaintiff "wishes to be excluded from workers' compensation and client liability;" (3) Defendant YWS "and its clients

are not liable for any benefits or damages to [Plaintiff] should an injury occur;" and (4) by signing the letter, Plaintiff "elected to be excluded from any workers' compensation policy." *Id.* As a condition of employment, Plaintiff was required by Defendant YWS to execute a "List and Refer Agreement" ("Employment Agreement"), which designated Plaintiff as a subcontractor who performed services through his own "independently established business and independently of YWS/Y.E.S." *Id.* ¶ 22. This Employment Agreement set forth (1) the terms of Plaintiff's compensation, (2) Plaintiff's performance of services, (3) Plaintiff's non-entitlement to supplies or reimbursement of expenses, (4) Plaintiff's acknowledgment of his performance of services as an independent contractor, (5) Plaintiff's agreement to indemnify YWS against "any form of financial detriment, including attorney's fees, whether alleged or actually incurred" in connection with Plaintiff's performance of services, (6) the operative term of the agreement, and (7) Plaintiff's agreement to keep confidential information about YWS's contractor clients, as well as the nature of Plaintiffs' employment. *Id.* ¶ 24.

Specifically, Plaintiff alleges that, throughout his employment with Defendant YWS, he:

- Consistently worked forty hours per week on construction projects throughout the State of California and the United States under YWS's direction and control;
- Was compensated by YWS to provide construction related services;
- Was terminable at YWS's will;
- Was prevented by YWS from engaging in "other obligations [which] interfere with the timely performance" of YWS work;
- Was required to "provide all of his own insurance for general liability, errors and omissions, casualty, etc., as he deems necessary and appropriate;"
- Was not entitled to any benefits, such as, premium overtime pay, worker's compensation, health plans, retirement plans, disability insurance, vacation pay, sick leave and the like;" and
- Was solely responsible for paying his own social security and income taxes per federal

and state law.

Id. ¶ 25. In addition, Plaintiff had a non-compete clause in his Employment Agreement. *See id.* ¶ 28.

On March 15, 2017, Plaintiff was assigned by Defendant YWS to an Army Corps of Engineers construction project at the United States Army Garrison Facility, Presidio of Monterey in Monterey, California ("the Monterey Presidio Project"). *Id.* ¶ 29. CTE Cal, Inc., the subcontractor on the project, used YWS's services to find Plaintiff. *Id.* Pursuant to his compensation agreement, Plaintiff was to be compensated $50.00 per hour for providing services to CTE Cal on the Presidio Project. *Id.* ¶ 30. Under CTE Cal's contract, however, Plaintiff was to be compensated $68 per hour. *Id.* ¶ 34. On October 21, 2017, CTE Cal left the Presidio Project following a nonpayment by the general contractor—this terminated CTE's Service Agreement with Defendant YWS. *Id.* ¶ 38. CTE Cal still paid Defendant YWS for services under the CTE Service Agreement and Plaintiff was compensated pursuant to his Employment Agreement. *Id.*

On April 20, 2017, federal litigation ensued regarding various alleged construction defects and nonpayment claims arising from the Monterey Presidio Project. *Id.* ¶ 39. The litigation was between Halbert Construction Company, Inc. (the general contractor on the project), CTE Cal. and McCullough Plumbing, Inc. (another subcontractor). *Id.* McCullough sued Halbert and Halbert filed a third-party complaint against CTE Cal for breach of contract related to alleged construction deficiencies. CTE Cal counterclaimed for nonpayment. *Id.* ¶ 40.

CTE Cal identified Plaintiff as a possible witness. *Id.* ¶ 41. In March 2019, Plaintiff sat for a deposition and as the case neared trial, Plaintiff was advised that CTE Cal intended to subpoena him to testify at trial. *Id.* On May 16, 2019, Plaintiff prepared and executed a declaration, which CTE Cal used for pre-trial motions, that set forth details concerning the nature of Plaintiff's employment at YWS. *Id.* ¶ 42. Plaintiff was subpoenaed by CTE Cal to testify at trial; CTE Cal arranged and paid for Plaintiff's travel accommodations to San Diego. *Id.* ¶ 43. Before the trial, on or around July 12, 2019, Defendant Yarbrough contacted Plaintiff by telephone

and advised him that he was prohibited from testifying at the trial and that if he testified, his employment with YWS would be terminated. *Id.* ¶ 44. Plaintiff still flew to San Diego to testify, but ultimately was not called to testify. *Id.* ¶ 45.

On or around August 6, 2019, Defendant Yarbrough demanded reimbursement from Plaintiff for any fees Plaintiff had received from CTE Cal for testifying in the litigation. *Id.* ¶ 46. Plaintiff told Defendant Yarbrough that he had not received any fees or compensation. *Id.* Defendant Yarbrough then informed Plaintiff by telephone that he was terminated from his employment with YWS. *Id.* At the time, Plaintiff was assigned to a construction project at a naval base in Monterey, California. *Id.* Following his termination, he was no longer allowed to access the project. *Id.*

B. Procedural History

On September 20, 2019, Plaintiff filed his Complaint alleging that Defendants violated RICO, 18 U.S.C. § 1962(c) and committed (1) unlawful business practices in violation of California Business & Professions Code 17200, (2) unfair business practices in violation of California Business & Professions Code 17200, (3) wrongful termination in violation of public policy, and (4) wrongful termination in breach of the covenant of good faith and fair dealing. *See generally* Compl. On January 21, 2020, Defendants filed a motion to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6). Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) ("Mot"), Dkt. 12. In this same motion, Defendants filed a request for judicial notice. Defendants' Request for Judicial Notice in Support of Defendants' Motion to Dismiss ("RJN"), Dkt.12-1. On February 4, 2020, Plaintiff filed an opposition. Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss ("Opp."), Dkt. 18. Defendants filed their reply on February 11, 2020. Defendants' Reply Brief in Support of Defendants' Motion to Dismiss ("Reply"), Dkt. 20. Along with their reply brief, Defendants filed a second request for judicial notice. Defendants' Second Request for Judicial Notice in Support of Defendants' Motion to Dismiss ("RJN 2"), Dkt. 19.

II. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (discussing Federal Rule of Civil Procedure 8(a)(2)). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The requirement that the court "accept as true" all allegations in the complaint is "inapplicable to legal conclusions." *Id.* It is improper for the court to assume "the [plaintiff] can prove facts that it has not alleged" or that the defendant has violated laws "in ways that have not been alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

If there are two alternative explanations, one advanced by the defendant and the other advanced by the plaintiff, both of which are plausible, the "plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6)." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). Dismissal can be based on "the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Hence, when a claim or portion of a claim is precluded as a matter of law, that claim may be dismissed pursuant to Rule 12(b). *See Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 975 (9th Cir. 2010) (discussing Rule 12(f) and noting that 12(b)(6), unlike Rule 12(f), provides defendants a mechanism to challenge the legal sufficiency of complaints). However, a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. *No. 84 Employer-Teamster Joint Council v. Am. W. Holding Corp.*, 320 F.3d 920, 931 (9th Cir. 2003).

III. DISCUSSION[2]

Defendants first argue that Plaintiff's RICO claim fails to adequately allege fraud and a pattern of racketeering activity. *See* Mot. at 3–5. Defendants next argue that Plaintiff's state law claims are barred under the federal enclave doctrine. *Id.* at 8. The Court addresses each in turn.

A. RICO Claim

RICO prohibits "any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or the collection of unlawful debt." 18 U.S.C. § 1962(c). A violation of § 1962(c), the section on which Plaintiff relies, requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985).

"To support the mail and wire fraud allegations, the plaintiffs must plausibly allege 'the existence of a scheme or artifice to defraud or obtain money or property by false pretenses, representations or promises,' and that [defendants] communicated, or caused communications to occur, through the U.S. mail or interstate wires to execute that fraudulent scheme." *George v. Urban Settlement Servs.*, 883 F.3d 1242, 1254 (10th Cir. 2016) (citation omitted). Because Federal Rule of Civil Procedure 9(b) requires a plaintiff to plead mail and wire fraud with particularity, the plaintiff must set forth, with detail, the time, place, and contents of the alleged false representation. *Id.* Defendants argue that Plaintiff has failed to adequately plead the predicate acts of mail and wire fraud. Mot. at 3. Plaintiff alleges that Defendants engaged in the

[2] Defendants request for the Court to take judicial notice of several exhibits. First, Defendants request for the Court to take judicial notice of the history of the Presidio of Monterey. *See* RJN, Ex. A. Second, Defendants request for the Court to take judicial notice of various public court documents. *See* RJN 2, Exs. A, 1, B, C. Federal Rule of Evidence 201(b) permits a court to take judicial notice of an adjudicative fact "not subject to reasonable dispute," that is "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Specifically, a court may take judicial notice of matters of public record. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018). Because the exhibits sought to be noticed are "matters of public record," Defendants' request for judicial notice is **GRANTED.**

predicate acts of mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343). Compl. ¶¶ 69–70. Defendants argue that the Complaint fails to allege the predicate acts with sufficient particularity. Mot. at 3–4. Defendants also argue that because Plaintiffs' fraud claim rest on misrepresentation of law, it does not amount to actionable fraud. *Id.* at 4 (citing *Miller v. Yokohama Tire Corp.*, 358 F.3d 616 (9th Cir. 2004)).

In *Miller*, the Ninth Circuit held that an employer's misrepresentation of law to its employees does not constitute actionable fraud. 358 F.3d at 621. There, Christopher Miller sued his former employer, Yokohama Tire Corporation, for RICO violations. *Id.* at 618–19. Miller worked for Yokohama from 1990 until 2001. *Id.* at 618. Miller alleged that throughout his eleven years of employment, he was ordered to work many overtime hours for which he was never paid additional compensation. *Id.* He claimed that various Yokohama managers falsely represented to him and other employees that they were not entitled to overtime pay because they were salaried. *Id.* Because Yokohama mailed him and other employees their paychecks or pay stubs twice monthly and their W-2s annually (or sent these items via wire transfers), Miller contended that the scheme to deny overtime pay was furthered through these paycheck-related mailings and wire transfers. *Id.* at 619. Hence, Miller argued that every time the Yokohama managers[3] sent him or other employees a paycheck or W-2, they committed a predicate act of mail or wire fraud and violated RICO (18 U.S.C. § 1962(c)). *Id.* at 619, 620. Miller's theory of fraud, however, was not actionable because the misrepresentation—*i.e.*, that he and his coworkers were not entitled to overtime pay—was a misrepresentation of law. Such misrepresentations are not actionable. *Id.* at 622.

Plaintiff's theory of fraud is that Defendants mischaracterized YWS construction workers' status to clients. In Plaintiff's view, Defendants misled their contractor-clients into believing that

[3] Miller brought this same claim against Yokohama. The Ninth Circuit determined that Miller's RICO claim against Yokohama failed because Miller premised Yokohama's liability on a respondeat superior theory. *Miller*, 458 F.3d at 619–20. That reasoning, however, is irrelevant to this Order and so this Court does not address that portion of the *Miller* order.

YWS construction workers were employees when, in fact, the workers were independent contractors. Opp. at 6. Plaintiff argues that this misrepresentation differs from the misrepresentation analyzed in *Miller* because Defendants did not make the misrepresentations to YWS employees. *Id.* at 5. This is a distinction without a difference. In determining whether or not a misrepresentation is legal or factual, the question is not to *whom* the misrepresentation was made, but rather *what* the contents of the misrepresentation are. *See Miller*, 358 F.3d at 621 ("Statements about domestic law are normally regarded as expressions of opinion which are not actionable in fraud even if they are false."). Hence, the relevant inquiry is—does Plaintiff allege that Defendants made a misrepresentation of fact *or* of law?

Plaintiff alleges that Defendants defrauded contract-clients by misrepresenting the status of YWS construction workers. This is a misrepresentation of law—the allegation focuses on the construction workers' employment status. Indeed, a "statement that an individual is a contractor, vendor, or an employee of a contractor, is a statement of law." *Bernal v. FedEx Ground Package Sys. Inc.*, 2015 WL 4273034, at *3 (C.D. Cal. July 14, 2015) (citing *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1136 (N.D. Cal. 2009)). As noted, misrepresentations of law cannot form the basis of a fraud claim.[4] *Id.* at 621.

Tronsgard v. FBL Financial Group, Inc. is instructive. 312 F. Supp. 3d 982 (D. Kan. 2018). There, the court held that the plaintiffs' complaint failed to allege facts supporting a RICO predicate act because the alleged fraudulent statements did not involve a misrepresentation of fact. *Id.* at 991 (citing *Miller*, 358 F.3d at 620–21). As in *Miller*, the plaintiffs premised their RICO claims on purported acts of mail and wire fraud involving their employers' alleged misrepresentations about their employment classification. *Id.* The plaintiff argued that factual

[4] There are four exceptions to this rule. A misrepresentation of law is actionable where the party making the misrepresentation: (1) purports to have special knowledge; (2) stands in a fiduciary or similar relation of trust and confidence to the recipient; (3) has successfully endeavored to secure the confidence of the recipient; or (4) has some other special reason to expect that the recipient will rely on his opinion. *Miller*, 358 F.3d at 621. None of these exceptions appear to be present here and Plaintiff does not argue that one is present. *See generally* Opp.

issues existed as to whether or not the defendants properly classified the plaintiffs as independent contractors. *Id.* at 994. In the context of alleging mail or wire fraud, however, the court merely considers the alleged misrepresentations that the defendant made. *Id.* Hence, after assessing the alleged misrepresentation—*i.e.*, that the plaintiffs were independent contractors—the court determined that the plaintiffs alleged a legal misrepresentation and not a misrepresentation of fact. *Id.*

Likewise, here, Plaintiff's allegation that Defendants misrepresented his and other YWS construction workers' employment status is a misrepresentation of law. The alleged misrepresentation is nearly identical to that of *Miller* and *Tronsgard*—as in those cases, the alleged misrepresentation focuses on misstatements about Plaintiff's employment status. *See* Opp. at 6 ("[Defendants] knowingly carried out a material scheme to defraud its contractor clients by misrepresenting to them the *status* of YWS employees." (emphasis added)). The Complaint alleges that Defendants lied to contractor-clients by stating that YWS construction workers were employees when, in fact, they were independent contractors. As established, this is a legal representation. *See e.g.*, *Tronsgard*, 312 F. Supp. 3d at 994. It appears that, like the plaintiff in *Miller*, Plaintiff is attempting to "transform a California state law wage and hour claim into a federal RICO claim under 18 U.S.C. § 1962(c)." 358 F.3d at 618.

Contrary to Plaintiff's position, *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2009) does not change this analysis. *Bridge* does not disrupt the requirement that a plaintiff must plead a fraudulent misrepresentation of fact to support the predicate act requirement. Rather, *Bridge* only held that a plaintiff need not show reliance. 553 U.S. at 649; *see also Tronsgard*, 312 F. Supp. 3d at 994 ("*Bridge* merely held that a plaintiff need not show reliance; it never held that a federal mail fraud claim does not require the other elements of a common law fraud claim—such as the existence of a material misrepresentation of fact.").

Because Plaintiff's predicate act allegations rest on a misrepresentation of law, the Court **GRANTS** Defendants' motion to dismiss Plaintiff's RICO claim. When dismissing a complaint

for failure to state a claim, a court should grant leave to amend "unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). It may be possible that Plaintiff could plead facts showing that Defendants misrepresented facts about YWS construction workers' employment status. Accordingly, Plaintiff may file an amended complaint as to his RICO claim no later than **June 26, 2020**.[5]

B. State Law Claims[6]

Defendants next argue that Plaintiff's second through fifth causes of action must be dismissed because they are barred under the federal enclave doctrine. Mot. at 8. While Plaintiff concedes that the Monterey Presidio is a federal enclave, he argues that because the federal government has enacted legislation stating that State wage-and-hour law applies to federal enclaves, his state law causes of action are not barred. *See* Opp. at 13. In the alternative, Plaintiff argues that even if the federal enclave doctrine bars these causes of action, he has plead sufficient facts to show that Defendants did not perpetrate their tortious acts exclusively on federal enclaves.

Under the U.S. Constitution, the United States has the power to acquire land from the states for certain unspecified uses and to exercise exclusive jurisdiction over such lands. These lands are known as "federal enclaves." *Swords to Plowshares v. Kemp*, 423 F. Supp. 2d 1031, 1034 (N.D. Cal. 2005). Article 1, Section 8, Clause 17 grants Congress the power to "exercise exclusive legislation in all cases whatsoever" over all places purchased with the consent of a state "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." *Id.* The power to exercise "exclusive legislation" holds the same meaning as "exclusive jurisdiction." *Id.* (quoting *Surplus Trading Co. v. Cook*, 281 U.S.647, 652 (1930)). Exclusive jurisdiction "assumes the absence of any interference with the exercise of the functions of the Federal Government and . . . debar[s] the State from exercising any legislative authority, including its taxing and police

[5] Because it is unnecessary, this Court does not address Defendants' other RICO arguments.
[6] While the Court held that Plaintiff's federal RICO claim must be dismissed, the Court retains diversity jurisdiction over Plaintiff's state law claims. *See* Compl. ¶ 9.

power, in relation to the property and activities of individuals and corporations within the territory." *Silas Mason Co. v. Tax Comm'n of Wash.*, 302 U.S. 186, 197 (1937); *see also S.R.A., Inc. v. Minnesota*, 327 U.S. 558 (1946) (noting that exclusive legislative power is "in essence complete sovereignty" because the federal property is immune from state taxation and from "state laws, not adopted directly or impliedly by the United States").

On federal enclaves, in the absence of federal legislation displacing state law, those state laws that existed at the time that the enclave was ceded to the federal government remain in force. *Paul v. United States*, 371 U.S. 245, 268 (1963). Three exceptions exist to this rule: (1) where Congress has, by statute, provided a different rule; (2) where the state explicitly retained the right to legislate over specific matters at the time of cession; and (3) where minor regulatory changes modify laws existing at the time of cession. *United States v. Sharpnack*, 355 U.S. 286, 294–95 (1958). Federal enclaves are thus typically under the exclusive jurisdiction of the United States, meaning the property and activities of individuals and corporations within that territory are also under federal jurisdiction. *See Swords to Plowshares*, 423 F. Supp. 2d at 1034.

The California Legislature ceded the Monterey Presidio to the United States Government in 1897. Mot at 8; *see also* RJN, Ex. A. It is not contested by the Parties and the case law supports that, when California ceded the Presidio to the United States, exclusive jurisdiction over that area was conferred upon the United States. *Standard Oil Co. v. People of State of Cal.*, 291 U.S. 242, 244 (1934). Because the state laws on which Plaintiff relies were enacted *after* the federal government acquired the Monterey Presidio, Plaintiff argues that California law applies on federal enclaves.

Plaintiff cites to 40 U.S.C. § 3172 and 26 U.S.C. § 3305(d) to support his argument that California law applies to the Presidio. Opp. at 13. Neither of these statutes, however, support Plaintiff's argument. These statutes vest California with authority to enforce its labor laws on federal enclaves—neither statute provides for a private right of action. 40 U.S.C. § 3172(a) states that "[t]he *state authority* charged with enforcing and requiring compliance with the state workers'

compensation laws . . . may apply the laws to all land and premises in the State which the Federal Government owns or holds." (emphasis added). This waiver of jurisdiction however is limited to "the state authority." *See* 40 U.S.C. § 3172(b) ("Limitation on relinquishing jurisdiction. The Government under this section *does not relinquish its jurisdiction for any other purpose*." (emphasis added)). Likewise, 26 U.S.C. § 3305(d) states that while unemployment compensation law cannot be evaded on federal enclaves, only the "State shall have full jurisdiction and power to enforce the provisions of such law . . . as though such place were not owned, held, or possessed by the United States." Thus, neither statute provides for a private cause of action. The statutes only allow for California or its agencies to enforce compliance with worker's compensation laws. *See Alexander v. Sandoval*, 532 U.S. 275, 286–87 (2001) ("[P]rivate rights of action to enforce federal law must be created by Congress."). Plaintiff's use of *S. G. Borello & Sons Inc. v. Department of Industrial Relations*, 769 P.3d 399 (Cal. 1989) is thus unpersuasive; that case involved the California Department of Industrial Relations, which is a state authority. Accordingly, Section 3172 and Section 3305(d) are unhelpful to Plaintiff.

In the alternative, Plaintiff argues that even if the federal enclave doctrine applies, it is irrelevant to Plaintiff's Complaint since many of the alleged tortious acts occurred outside of federal enclaves. Opp. at 11. Pursuant to the above analysis, Plaintiff's state-law wage and hour claims that stem from the Monterey Presidio project are barred by the federal enclave doctrine. Likewise, any claims stemming from projects on federal lands are barred. The issue thus becomes whether or not Plaintiff has plead sufficient facts about non-federal enclave projects to support his wage-and-hour and wrongful termination claims. The Court finds that Plaintiff has.

Plaintiff first contends that the point of the allegations pertaining to the Monterey Presidio Project were to provide context about the severity and scope of Defendants' scheme so as to support the RICO claim. Opp. at 12. Plaintiff maintains that the California Labor Code violations are unrelated to Plaintiff's services at the Presidio of Monterey. The Court agrees. The Complaint alleges that Defendants required him to enter into an illegal agreement accepting his

misclassification as an independent contractor and that this violated California Business and Professions Code. *See* Compl. ¶¶ 80–95 (Counts II & III); *see also supra* I.A. (recounting the alleged labor violations). This is an actionable. *See Dynamex Operations W v. Superior Court*, 416 P.3d 1 (Cal. 2018); *see also Tan v. GrubHub, Inc.*, 171 F. Supp. 3d 998, 1004 (N.D. Cal. 2016). The "illicit agreement" exists outside of the federal enclave. Indeed, Plaintiff had to enter this agreement regardless of where he performed construction services—the agreement was applied to *all* contracted services (private, state, *or* federal). Plaintiff has pled sufficient facts to show that the agreement applied equally to his non-federal projects. These projects can support Plaintiffs' unfair/unlawful business practices claims.[7]

Plaintiff next argues that the alleged witness tampering, which support his wrongful termination claims (counts four and five), is not barred by the federal enclave doctrine. In Plaintiff's view, because the facts giving rise to these claims occurred outside of the federal enclave and a year after Plaintiff stopped working on the Monterey Presidio project, the federal enclave doctrine does not apply to these claims. Defendants argue that these claims are still barred because the federal enclave doctrine applies even in circumstances where the alleged wrongful conduct occurs off the enclave. Reply at 9. The Court disagrees with Defendants.

Powell v. Tessada & Associates, Inc. is instructive. There, the court held that the federal enclave doctrine still barred the plaintiffs' state law claims even though the decision to fire the plaintiffs was made off the federal enclave. 2005 WL 578103, at *1 (N.D. Cal. 2005). Notably, in *Powell*, the plaintiffs worked *only* on the federal enclave and the decision to fire the plaintiffs was a decision about employment practices *on* the federal enclave. *Id.* at *2. Here, in contrast, Defendants' decision to fire Plaintiff had nothing to do with his work on a federal enclave. To the contrary, Plaintiff alleges that Defendants terminated him to stop him from talking. Hence, the termination decision had nothing to do with "employment practices on the federal enclave."

[7] As noted, Plaintiff's work on the Monterey Presidio Project or on other federal enclaves cannot form the basis of Plaintiff's unfair/unlawful business practices claims. A contrary ruling would permit plaintiffs to circumvent the federal enclave doctrine.

Moreover, unlike the *Powell* plaintiffs, Plaintiff did not work exclusively on a federal enclave. Rather, Plaintiff worked on both commercial and government projects. In other words, he worked generally for Defendant YWS; his work was not exclusively on federal enclaves. Indeed, the decision to terminate Plaintiff prevented Plaintiff from working on *all* YWS projects, regardless of whether such projects were on federal land. Accordingly, Plaintiff's unfair business practice and wrongful termination claims are not barred by the federal enclave doctrine.

IV. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is **GRANTED in part and DENIED in part**. Plaintiff may file an amended complaint as to his RICO claim by **June 26, 2020.** *See supra*. Plaintiff may not add new claims or parties without leave of the Court or stipulation by the Parties pursuant to Federal Rule of Civil Procedure 15.

IT IS SO ORDERED.

Dated: May 7, 2020

EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California